IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 91 of 2005

with

SPECIAL CIVIL APPLICATION Nos.1182, 1194 and 1202 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARSHAD D TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

MR DEVANG D TRIVEDI for Petitioners

MR SP HASURKAR, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 08/04/2005

ORAL JUDGEMENT

Rule. Learned AGP Shri Hasurkar waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the parties, these petitions are taken up for final disposal today.

2. In these petitions, the petitioners have challenged the action of the respondents in reverting the petitioners from Class III posts to Class IV posts by orders passed in April 2003. The case of the petitioners is that they were promoted on ad-hoc basis for a period of one year by order dated 24.4.02 from class IV cadre posts which the petitioners are holding substantively to different posts in Class III categories. One of the conditions of this promotion order was that the petitioners shall have to pass the examination for being retained in Class III posts within a period of one year of their promotion and if they do not pass such a test, they will be reverted to their substantive posts. The case of the petitioners is that well before the completion of the said period of one year, they represented to the authorities that they should be sent for examination which is being conducted by the Sardar Patel Institute of Public Administration. It is the case of the petitioners that despite their representations, the respondents did not send their names for being included in the examination and at the end of one year of their ad-hoc promotion, they came to be reverted solely on the ground that they had not cleared the examination. It is, therefore, being contended that one one hand, the respondents themselves did not send the petitioners for the examination and on the other, they are being reverted for not having passed the test.

3. The respondents have filed affidavit in reply and resisted the petitions. It is primarily contended that the ratio of direct recruitment versus promotion for Class III posts initially was 9 : 1 which was later on modified as can be seen from the circular dated 15.7.98 to 8 : 2. On the basis of the circular dated 6.4.95, it is being pointed that the Government had cautioned the departments against sending Class IV employees in excess of their quota for examination. It is contended that the petitioners were promoted in excess of ratio meant for promotions for Class III posts and that therefore their cases were not considered for sending them for examination.

4. Counsel for the petitioners submitted that the Government itself has decided vide circular dated 29th

August 2001 that in view of the ban on recruitments, even after discounting the numbers of vacancies to be abolished if there are vacant posts of Class III categories promotion unfilled, cases of the employees in Class IV category should be considered for ad-hoc promotion on the condition that they should be reverted when regularly selected direct recruits are available on the promotional posts. He, therefore, submitted that the cases of the petitioners should be considered for ad-hoc promotion. He also contends that reversion order was passed without hearing the petitioners.

5. Having heard the learned advocates appearing for the parties, it appears that the examination envisaged under the rules is for regular promotion to Class III posts. Obviously, there cannot be regular promotion of any persons in excess of the quota meant for promotees. In that view of the matter, the stand of the respondent in not sending the petitioners for examination cannot be found fault with. This however does not answer the question involved in the petitions fully. The petitioners were earlier considered and promoted on ad-hoc basis since direct recruits were not readily available. If that be so, I do not see any justification in reverting them solely on the ground that they did not pass the examination. When the Government circular itself envisages a situation where adhoc promotion can be granted to employees belonging to Class IV posts against the quota meant for direct recruits till regularly selected candidates are available, there is bound to be some excess promotions, of course, on adhoc basis in excess of the quota available for Class IV employees for promotion. In that sense, I do not find any justification in not considering the case of the petitioners for adhoc promotion till regularly selected candidates are available solely on the ground that they had not passed the departmental test. At the same time, I do not find any substance in the argument of the learned advocate for the petitioners that the reversion would not have been effected without hearing the petitioners. This was for the simple reason that the petitioners were promoted on adhoc basis and the adhoc promotions were also for the fixed period.

6. In the result, while disposing of these petitions, the respondents are directed to consider the cases of the petitioners for ad-hoc promotion in accordance with seniority and the administrative requirement. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. With these directions, these petitions

are disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)